IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Writ Petition (criminal side) NO. 968of 2005

Mahant Govind Das
Disciple of Mahant Mani Ram Das,
R/o Sant Sewa Asharam,
Laxman Jhula,
District Pauri Garhwal Petitioner

Versus

1. Sessions Judge, Pauri Garhwal
   Camp at Laxman Jhula

2. Suh Divisional Magistrate
   Lansdown
   District Pauri Garhwal
3. Krishna Avtar Gupta Manger
   Manger
   Kailashanand Mission Trust,
   Laxman Jhula
   District Pauri Garhwal respondents.

With

Cr. M. Application No. 743 of 2001 (old 3230 of 1984)

Mahant Govind Dass
R/o village Laxman Jhula
PS Laxmanjhula
District Pauri Garhwal
applicant

Versus

1. State of UP
2. Sri Vijai Kumar, Manager
   Kailashanaand Mission trust
   PS Laxman Jhula
   District Pauri Garhwal opposite party

Hon'ble B.C.Kandpal, J

This petition has been filed for seeking a writ in the nature of Certiorari for quashing the order dated 3.5.1982 and the

Judgment and order dated 11.4.1984 passed by Sub Divisional Magistrate Lansedwon, Pauri Garhwal as well as Sessions Judge Pauri Garhwal in the proceedings in Cr. Case No. No. 21 of 1982 V.K. Gupta vs Mahant Mani Ram Das under Section 145 Cr. P.C.

Brief facts of the case are that a Cr.M. A under Section 482 Cr. P.C. was filed earlier challenging the aforesaid order in the year 1984. The Hon'ble High Court of Allahabad on 19.4.1984 admitted the petition and directed that further proceedings in the case under Section 145 Cr.P.C. shall remained stayed.

Subsequently when the matter came up for hearing in the year 1997, the another Hon'ble Judge of the Allahabad High Court came to the conclusion that the petition under Section 482 Cr. P.C. was not maintainable in view of the then latest pronouncement of the Hon'ble Apex Court. In the Year 1998 the petitioner desired a remedy to file writ petition and the court granted permission to the petitioner for doing so.

To day I have heard Sh. Lokendra dobhal the learned counsel for the petitioner,Shri Ramjisrivastava, learned counsel for opposite party No. 3, learned AGA on behalf of opposite party No. 1 and 2 as well as perused the record.

The petition has come up for final hearing after a lapse of about 21 years. The proceedings under Section 145 Cr. PC are emergent proceedings and the basic object of the same is to prevent breach of peace with regard to any immovable property. On account of the stay granted by the Hon'ble Allahabad High Court, the proceedings have remained stayed for more than 21 years, therefore in my opinion it will not be proper to commence those proceedings now which remained stayed for more than 21 years. The record reveals that the petitioner is claiming titled on the basis of a lease deed as well as on the basis of certain Khasras filed by the petitioner.

On the other hand respondent No. 3 is also claiming his titled on the ground of certain entries made in the revenue records. Such a dispute can only be resorted to before civil Court of the competent jurisdiction.

If no breach of peace has occurred for the last more than 21 years, there is no reason as to why the proceedings under Section 145 Cr. P.C. should be kept pending.

In the aforesaid facts and circumstances of the case, I consider it proper in the interest of justice to quash the order passed under Section 146 (1) of the Cr.P.C. as well as order passed by the learned Sub Divisional Magistrate in the proceedings under Section 145 Cr.P.C.

In the result the petition is allowed. The impugned order dated 3.5.1982 passed by the Sub Divisional Magistrate Lansdown as well as the judgment and order dated 11.4.1984 passed by the learned Sessions Judge Pauri Garhwal in the revision are quashed.

It will however, be open to the learned Magistrate to start fresh proceedings under Section 145(1) Cr. P.C., if the circumstances existing as of to day so warrants.

With the aforesaid observation, the writ petition stands disposed of.

A copy of this order be placed in the file of connected Cr. M.A. No. 743 of 2001 (old 3230/1984)

(B.C. Kandpal, J.)

26.10.2005
nbj